

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
Jacksonville District**

EMPLOYEE:

Bruce Michael Baranovic, Sr.
5847 Oliver Street
Jacksonville, FL 32211

ATTORNEY FOR EMPLOYEE:

Henry Mowry, Esquire
Morgan & Morgan
76 S. Laura Street, Suite 1100
Jacksonville, FL 32202

EMPLOYER:

Employee Leasing Solutions
1401 Manatee Avenue West
Suite 600
Bradenton, FL 34205

ATTORNEY FOR EMPLOYER/CARRIER:

Gregory D. White, Esquire
Hurley, Rogner, Miller, Cox, Waranch &
Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, FL 32789

CARRIER:

The Guard Insurance Company
c/o Americhase Services Company
P O Box 1368
Wilkes-Barre, PA 18703

OJCC CASE NO.: 08-020905ICH

D/A: 5/9/2008

FINAL ORDER

After due notice to all parties the final hearing on the merits of this claim came on for hearing before the undersigned Judge of Compensation Claims on May 4, 2009, in Jacksonville, Florida. The Court conducted and concluded a Merit Hearing on all outstanding Petitions for Benefits. Following the close of the Merit Hearing, the Court announced it's findings.

The claims presented by the claimant were as follows:

1. TPD from 5/27/08 at \$400.00 per week.
2. Authorization of a neurosurgeon per 5/27/08 referral from Dr. Malczak.
3. Penalties, interest, costs and attorneys' fees.

OJCC Case #08-020905ICH
Final Order
Page 1 of 5

The defenses raised by the employer/carrier were as follows:

1. Claim not compensable.
2. Industrial accident not the major contributing cause of the condition and need for treatment.
3. Apportionment.
4. Any loss of earnings not causally related to the industrial accident.
5. Voluntary limitation of income/deemed earnings.
6. Requested medical care not medically necessary or causally related.
7. Claimant misrepresented himself about prior neck injuries and not entitled to benefits pursuant to Florida Statute §440.09(4) and §440.105.
8. No penalties, interest, costs and attorney's fees due and owing.
9. Employer/carrier costs to be paid by the claimant.

The following documentary evidence was received into evidence at the request of the Judge:

1. The Pre-Trial Stipulations and all subsequent amendments.

The following documentary evidence was received into evidence pursuant to the request of the claimant.

1. Deposition of Dr. Malczak.

The following documentary evidence was received into evidence pursuant to the request of the employer/carrier.

1. The deposition of the claimant.
2. The deposition of Cheryl Chever.
3. The deposition of Cory Yordon (for historical purposes).

4. The deposition of Dr. Rogozinski.
5. The deposition of Ed Senez.
6. The deposition of Helen Fisher (for historical purposes).
7. The deposition of Peggy Caperer (for historical purposes).
8. Notice of Denial dated 5/29/08.
9. Disc containing surveillance of the claimant.

At the hearing, the claimant, Bruce Baranovic, appeared and testified live before me. Additionally, William Lane, surveillance investigator, also appeared and testified live. There were no other live witnesses. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I may not recite in exclusive detail all the witnesses testimony and may not refer to each piece of documented evidence, I have observed the candor and demeanor of the live witnesses and have attempted to resolve all the conflicts in their testimony.

I find that the claimant is not a credible witness. The claimant had a significant industrial accident on February 24, 2000. He had a cervical fusion with Dr. Michael Broom. He continued to treat at Dr. Broom's office until as late as May 13, 2005. A pain management specialist in Dr. Broom's office, Dr. Mark Gerber saw the claimant on May 13, 2005. At that time, he was diagnosed with chronic neck pain. The claimant also had multiple, frequent emergency room visits for his neck complaints until as late as May 10, 2006, as documented in the records of Florida Hospital. In his deposition, the claimant testified that he last received medical care for his February 21, 2000 industrial accident in 2002. The medical records placed into evidence by the employer/carrier show

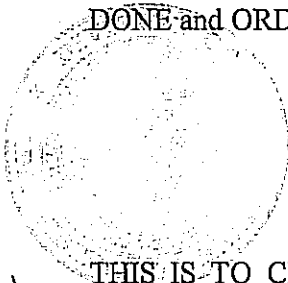
that this is not true. Additionally, the claimant had another neck injury on April 6, 2006 and he denied that in his deposition. I also find that the video surveillance taken of the claimant is in stark contrast of the claimant's presentation at the Baptist Acute Care Center. The claimant was shown lifting a heavy television set from the curb and placing it in the back of his pickup truck. During this time frame Dr. Malczak indicated that he would not have expected the claimant to have been able to lift more than one pound. I find that the claimant was less than candid about his prior neck condition. While he did disclose the neck injury from February 21, 2000, he significantly downplayed the treatment after that and failed to disclose the neck injury from April 6, 2006. To the extent that they differ, I accept the testimony of Cheryl Chever over that of the claimant regarding the April 6, 2006 date of accident where the claimant injured his neck. I find that the claimant did not give accurate medical histories to the physicians.

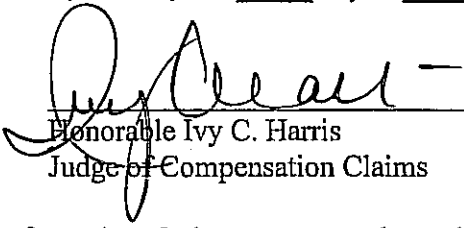
Given the severity of the claimant's prior neck injuries and ongoing complaints I find that Dr. Rogozinski's opinions on major contributing cause are well founded. In contrast, Dr. Malczak's opinions on major contributing cause are based on an insufficient and incomplete understanding of the extent of the claimant's prior neck condition. To the extent that they differ, I accept the testimony of Dr. Rogozinski and find that the industrial accident of 5/9/08 is not the major contributing cause of the claimant's condition and need for treatment. Accordingly, it is Ordered and Adjudged as follows:

1. The industrial accident is not the major contributing cause of the claimant's condition and need for treatment.
2. All claims are denied and dismissed with prejudice.

3. The claimant shall reimburse the employer/carrier appropriate costs.
4. Jurisdiction is retained by this Court to determine the appropriate amount.

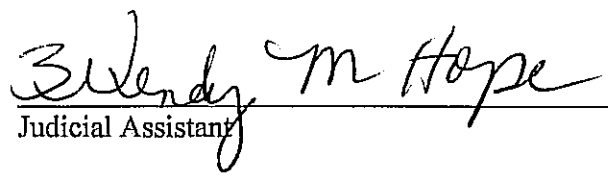
DONE and ORDERED in Jacksonville, Florida, this 17th day of June, 2009.





Honorable Ivy C. Harris
Judge of Compensation Claims

THIS IS TO CERTIFY that the foregoing Order was entered on the 17th day of June, 2009 and a copy was sent by regular mail to all interested parties at the addresses listed above.



Judicial Assistant